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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/477,870	01/05/2000	CHIA-HONG JAN	042390.P5488	9851
7590 11/04/2003 DARREN J MILLIKEN BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 12400 WILSHIRE BOULEVARD 7TH FLOOR LOS ANGELES, CA 90025			EXAMINER OWENS, DOUGLAS W	
			ART UNIT 2811	PAPER NUMBER

DATE MAILED: 11/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/477,870

Applicant(s)

JAN ET AL.

Examiner

Douglas W Owens

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31 and 123-133 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31 and 126-133 is/are rejected.
- 7) ☒ Claim(s) 123-125 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 28, 2003 has been entered.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 31 and 126 – 133 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 4 of U.S. Patent No. 6,593,633. Although the conflicting claims are not identical, they are not patentably distinct from each other because of the following reasons:

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Claims 1 and 3 of the patent recites each limitation of claim 31 of the instant application with the exception of the gate layer being of uniform width along a height thereof. It is conventional in the art to form gate layers having uniform width along a height and it would have been obvious to one having ordinary skill to use such a well-known structure.

Regarding claim 126, the patent does not recite the limitation of the insulative layer comprising an oxide. It would have been obvious to one of ordinary skill in the art to use an oxide, since it is a known material that is well suited for the intended use of an insulative layer.

Regarding claim 127, the patent does not recite the limitation of the gate electrode comprising a polysilicon. Polysilicon is commonly used in the art for gate layers and would have been obvious to incorporate into the claimed invention since it is a known material that is well suited for the intended use.

Regarding claims 128 and 133, the patent does not recite the limitation of the conductive layer comprising a polycide of TiSi_2 . Claims 1 and 3 of the patent require that the conductive layer be a metallized conductor. TiSi_2 is a commonly used metallized conductor that would have been obvious to use since it is a known material that is well suited for the intended use.

Regarding claims 129 and 130, claim 2 of the patent recites the limitations of the first spacers comprising an oxide and the second thin spacers comprising a nitride.

Regarding claims 131 and 132, claim 4 of the patent recites the limitations of the thin third spacers comprising an oxide, and the fourth thick spacers comprising a nitride.

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Response to Arguments

4. Applicant's arguments with respect to claims 31 and 126 – 133 have been considered but are moot in view of the new ground(s) of rejection.

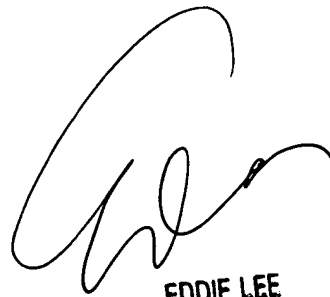
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Douglas W Owens whose telephone number is 703-308-6167. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie C Lee can be reached on 703-308-1690. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

DWO



**EDDIE LEE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800**